

Exhibit 3

1 Moreover, our approach allows us to, as I think Your
2 Honor pointed out, resolve some of those common objections
3 early on and to determine, you know, what are the groupings of
4 cases. We can probably say, you know, X number of cases all
5 made this same objection and then we can resolve them kind of
6 at the front end instead of having essentially bellwethers
7 where we only deal with a small subset of cases which may not
8 raise some of the issues that we will have to deal with later.

9 THE COURT: Well, I think also if we have an
10 understanding of even, you know, in how many cases is there
11 this issue, right?

12 MS. PATTERSON: Correct.

13 THE COURT: Whatever that issue may be. It's a
14 proportionality analysis almost, right? Let's prioritize that
15 issue for resolution because it's going to impact, say, a
16 hundred as opposed to just five, right?

17 MS. PATTERSON: Absolutely, Your Honor.

18 And I think that that really touches on kind of one
19 of the key disputes between plaintiffs and defendants is that
20 we're having a lot of these arguments in a very abstract sense,
21 right, in the ESI protocol or in the discovery plan, when
22 really we would be benefited from having concrete discussions
23 about this in the context of specific cases and the specific
24 needs of the cases so we can weigh proportionality.

25 You know, if you go back to the hyperlink discussion,

1 proposal.

2 THE COURT: Okay.

3 MS. PATTERSON: Your Honor, respectfully, what
4 Mr. Buchanan is proposing now is slightly different than what
5 plaintiffs have said that they are proposing. What we had
6 understood that they said was we would do plaintiff fact sheets
7 with accompanying document requests for all of the plaintiffs.
8 Again, those document requests are critically important. Where
9 I thought we were disagreeing is what is the content of those
10 document requests.

11 Now, Mr. Buchanan is changing it a little bit from
12 what we had said in those meet-and-confers. But I just want to
13 point that out as an initial matter. Regardless of whether you
14 do plaintiff fact sheets or master discovery, it is critical
15 for the defendants to get at least some document requests out
16 to plaintiffs or documents that support their plaintiff fact
17 sheet responses. That is what we did in the consumer class
18 case. And that is something that, frankly, took a long time
19 for us to negotiate and actually get the appropriate responses
20 to.

21 THE COURT: Well, isn't there a -- is there a
22 scenario here -- and wildly out on a limb, I suppose -- where
23 we can have a conversation about what these fact sheets,
24 discovery requests look like? Let's call them "fact sheets,"
25 okay, the content of the fact sheets for each and every

1 plaintiff. And then depending on what they say, defendants can
2 pick a small set of document requests for each plaintiff. Is
3 that not something that might be reasonable?

4 MS. PATTERSON: Your Honor, may I ask a clarifying
5 question?

6 THE COURT: Yeah.

7 MS. PATTERSON: Would we get document requests for
8 all of the plaintiffs? Because, again, our concern is that --

9 THE COURT: That's what I'm thinking, like targeted
10 requests. So you have a plaintiff fact sheet, there is a
11 question about when did you receive notice of, you know, your
12 potential claims. They say, you know, yesterday, but then you
13 ask for documents supporting yesterday, right? I mean, is that
14 crazy?

15 MS. PATTERSON: Yes, Your Honor. I -- it's not
16 crazy. It's not crazy.

17 (Laughter.)

18 THE COURT: Okay.

19 MS. PATTERSON: It's not crazy.

20 THE COURT: We can redact that from the record.

21 (Laughter.)

22 MS. PATTERSON: Please do, please do.

23 Your Honor, yes, I will answer your question. As
24 long as it's custodial documents, then that's essentially what
25 we're proposing.

1 THE COURT: Uh-huh.

2 MS. PATTERSON: Is that we give that and we tell
3 them, hey, here are the master requests that we need, you know,
4 whether it's plaintiff fact sheets or otherwise, here are those
5 key issues, and here's the custodial data or the custodial
6 documents we need for that.

7 THE COURT: Uh-huh.

8 MS. PATTERSON: Now, if they say "yesterday," we
9 would still want custodial information for any, for example,
10 newsletters that they may have received prior to yesterday, to
11 prove up that point.

12 THE COURT: Uh-huh. I get it.

13 MS. PATTERSON: But so long as it's meaningful
14 document discovery, meaningful documents, custodial documents
15 we're getting from plaintiffs, that -- you know, I don't want
16 to speak for my colleagues, but that's something that we have
17 discussed before as potentially working for us.

18 THE COURT: Okay.

19 MS. BARNABY: Kelley Barnaby on behalf of OptumRx and
20 related defendants.

21 I think clarifying a little bit, it's -- I think
22 Melissa was getting to this point. It's not just the documents
23 that prove up the point. It's the opportunity to have
24 documents that may criticize the point or disprove the point.
25 And we want to be able to explore that sooner rather than

1 later.

2 And the second concern is I think creating an
3 asymmetry of discovery. So there is a mention of "defendant
4 fact sheets." So are we talking about fact sheets all around
5 with limited document requests, or are we talking about
6 plaintiff fact sheets and document requests with all-out
7 discovery on defendants?

8 THE COURT: Uh-huh.

9 MS. BARNABY: And so I just want to raise that point
10 as well, that we think that there should not be an asymmetry
11 here in the process.

12 THE COURT: Okay.

13 MS. PATTERSON: Yes, Your Honor. And Ms. Barnaby
14 raises an excellent point. This is the first time we've really
15 discussed defendant fact sheets. Our understanding of the
16 proposed plan was that all three of the plaintiffs would
17 coordinate together and serve master discovery requests on all
18 of the defendants. It would be an all-out --

19 MR. BUCHANAN: Yeah. I think that was a -- that was
20 a slip on my part, Your Honor. I think in our compromise on
21 our side among the three tracks, we agreed to master requests
22 against the defendants.

23 THE COURT: Okay.

24 MR. BUCHANAN: And that's why, frankly, from our
25 perspective, providing a fact sheet -- and we did agree that we

1 would do stipulated document requests within the fact sheet.
2 That was contemplated. I guess if that was misheard or I
3 misspoke, I apologize.

4 THE COURT: Okay.

5 MR. BUCHANAN: Again, though, this was designed,
6 frankly, to enable sharing of early information, not, you know,
7 flipping over the mattress type and getting everything that's
8 under there and finding everything. It was designed to get
9 information over the transom to inform, if you will, the
10 selection of a group of cases where we are going to do that.
11 Because ultimately that's what happens. I mean, it's through
12 that crystallization process where we do the full fact
13 discovery that a lot of the -- that's where the issues really
14 get joined. That's when the issues -- the legal issues get
15 joined. That's when everything gets joined.

16 If we want to do everything against everybody all at
17 once, our proposal is a little different. Our proposal is a
18 little different, because everybody has got to do everything
19 all at once and on not just the discovery pool cases, but
20 everybody is going to have to be taking that discovery from the
21 defense. And I do think there is some collateral fallout to
22 that that makes this MDL less central and, frankly, a number of
23 other courts, unfortunately, I don't know, a place where this
24 type of litigation will be found.

25 THE COURT: Okay.

1 I would join Mr. Scherr in saying this may be a
2 unique circumstance where putting off a ruling until we at
3 least have a consolidated amended complaint and understand what
4 that universe looks like would be appropriate.

5 I also think that if we're going with a plaintiff
6 fact sheet model, the number of requests that the TPPs then are
7 talking about looks very different. If we're also talking
8 about sharing discovery, it sounds to me like we've now created
9 a world in which the State AG Track and the Self-Funded Payer
10 Track are doing fact sheets towards defendants and we're doing
11 fact sheets with plaintiffs while the TPPs are going to be
12 having full-fledged discovery of us that would be shared with
13 the other plaintiffs.

14 So, again, I think we need to have much more clarity
15 on what exactly we're dealing with, and then there could be a
16 fact sheet model that works really well to get everyone kicked
17 off in a meaningful, substantive way with some document
18 requests and we hit the ground running from there.

19 THE COURT: Okay.

20 MS. CICALA: Your Honor, if I may clarify one thing.
21 Plaintiffs have not proposed to defendants that there be a
22 defendant fact sheet. That's not something in our submission.
23 We've proposed serving them -- we've proposed -- for the State
24 AG Track. I just wanted to clarify. I think Mr. Buchanan
25 might have miss --

1 your expectations of what it would look like and plaintiffs'
 2 expectations of what it would look like and what additional
 3 information you might need. So you don't necessarily have to
 4 submit a proposed form in 15 days, but have this conversation
 5 and report back on where you are.

6 MR. MOORMAN: That's exactly what we envisioned.
 7 Thank you, Your Honor.

8 THE COURT: Yeah. Okay. Does that help?

9 MS. CICALA: Yes. Thank you, Your Honor.

10 THE COURT: All right. Wonderful. Then we are
 11 adjourned. And I thank you for your time and your appearance
 12 here today.

13 Thank you, Mr. Kurz.

14 THE COURTROOM DEPUTY: All rise.

15 THE COURT REPORTER: My pleasure, Your Honor.

16 (Proceedings concluded at 4:25 p.m.)

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 18 **FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE**
 19 - - - - -

20 I certify that the foregoing is a correct transcript
 21 from the record of proceedings in the above-entitled matter.

22
 23 /S/John J. Kurz, RDR-RMR-CRR-CRC

May 14, 2024

24 Court Reporter/Transcriber
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